

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

DRY CREEK JOINT ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2010110717

ORDER GRANTING DISTRICT'S
MOTION TO DISMISS

On November 19, 2010, Parents on behalf of Student (Student) filed a Request for Due Process Hearing, naming Dry Creek Joint Elementary School District (Dry Creek), Placer County Office of Education (PCOE), and Placer County Children System of Care (PCCS) as respondents. On December 10, 2010, Student filed an amended complaint (complaint) naming the same respondents. In his complaint, Student alleges violations of the Individuals with Disabilities Education Act (IDEA) for school years 2005-2006 to 2010-2011.

On December 23, 2010, Dry Creek filed a Motion to Dismiss, alleging that part of Student's claims against it in issues one, two, three, and seven are barred by the applicable Statue of Limitations. (Ed. Code, § 56505, subd. (1).)

OAH received no response to the Motion to Dismiss/Request for Dismissal from Student. The amended complaint does contain a section which sets forth Student's position as to why his claims are not subject to the two year limitations period.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial

responsibility[.]) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Congress intended to obtain timely and appropriate education for special needs children. Congress did not intend to authorize the filing of claims under the IDEA many years after the alleged wrongdoing occurred. (*Student v. Saddleback Unified School District* (2007) O.A.H. case 2007090371; *Student v. Vacaville Unified Sch. District* (2004) S.E.H.O case SN 04-1026, 43 IDELR 210, 105 LRP 2671, quoting *Alexopoulos v. San Francisco Unified Sch. District* (9th Cir. 1987) 817 F.2d 551, 555.)

California implements the Individuals with Disabilities Education Act (IDEA) through its special education laws. (*Miller v. San Mateo-Foster City Unified Sch. District* (N.D. Cal. 2004) 318 F.Supp.2d 851, 860.) Education Code section 56505, subd. (l), provides that any request for a due process hearing shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request.¹ (See also, *Draper v. Atlanta Ind. Sch. System* (11th Cir. 2008) 518 F.3d 1275, 1288, 20 U.S.C. §1415(f)(3)(c).) The two year limitations period does not apply if the parent was prevented from filing a due process request due to either (1) specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request, or (2) the local educational agency withheld information from the parent which is required to be provided to the parent.² (See also, *J.L. v. Ambridge Area Sch. District* (W.D. Pa. February 22, 2008) 2008 U.S. Dist. LEXIS 13451, *23-24.)

The “‘knowledge of facts’ requirement does not demand that the [party] know the specific legal theory or even the specific facts of the relevant claim; rather the [party] must have known or reasonably should have known the facts underlying the supposed learning disability and their IDEA rights.” (*Miller, supra*, 318 F.Supp.2d at p. 861 (citing *Jolly v. Eli Lilly & Co.* (1988) 44Cal.3d 1103, 1111); *Ashlee R. v. Oakland Unified Sch. District Financing Corp.* (N.D. Cal. 2004) 2004 U.S. Dist. LEXIS 17039, p. 16.)

The narrow exceptions of misrepresentation and withholding of information require that the local education agency’s actions be intentional or flagrant rather than merely a

¹ Prior to October 9, 2006, the statute of limitations for due process complaints in California was generally three years. Effective October 9, 2006, California amended the statute of limitations to be consistent with the federal limitations period of two years.

² The two year statute of limitations and exceptions were added when the IDEA was revised and signed into law in December 2004, becoming effective July 1, 2005. (20 U.S.C. § 1415(f)(3)(C)-(D).) By its terms, section 56505, subdivision (l) sets forth the two exceptions in accordance with part 300.516(c) of title 34 of the Code of Federal Regulations. Thus, California has in effect adopted the IDEA statute of limitations and its two specific exceptions.

repetition of an aspect of determining whether a student received a free appropriate public education (FAPE). “The statutory requirement that the misrepresentation or withholding prevented (the parent) from requesting the hearing further evidences the stringency, or narrowness, of these exceptional circumstances.” (*School District of Philadelphia* (Pa. State Educational Agency, Appellate Panel, March 5, 2008) 49 IDELR 240, p. 5 [108 LRP 13930].)

DISCUSSION

In his complaint, Student contends that the basis of his claims was that Student’s teachers were not “appropriately and adequately prepared and trained” as they did not have the proper credentials or training to teach a child with Student’s primary disability of Emotional Disturbance.³ (Complaint at pp. 10-11.) Student further avers that Parents did not learn or have reason to know about this fact until they were informed by counsel in October 2010 based on information from the website of the California Commission on Teacher Credentials. Thus, Student is not relying on the two above-described exceptions, but as to whether the Parents “knew or had reason to know of the facts underlying the basis for the request [for due process hearing].”

Dry Creek contends that the District did not “intentionally and flagrantly” misrepresent or withhold information to Parents “nor does [Student] provide facts that the alleged (ambiguous) credentialing errors limited his ability to seek a due process hearing.”

As stated above, the “knowledge of facts” requirement does not require that a party know the specific legal theory or specific facts of the relevant claim. What is required is that the parents know or should have known the facts underlying the supposed disability and their rights under the IDEA. (*Miller, supra*, 318 F.Supp.2d at p. 861.) Here, there is no allegation in the complaint that Parents were not aware of their IDEA rights. In reviewing the factual allegations in the complaint, there are numerous citations to Student’s behavioral problems, efforts by school officials to deal with these problems, and the continuing problems encountered by Student. Thus, Student’s parents were aware prior to the limitations period of the facts underlying Student’s learning disability. Therefore, Parents have met the “knowledge of the facts” requirement and their claims before November 19, 2008 are barred by the two year statute of limitations.

³ Student cites in support 20 U.S.C. § 1412(a)(14) and 34 C.F.R. § 300.156.

ORDER

Dry Creek's Motion to Dismiss is granted as to Issues One, Two, Three, and Seven are they relate to Dry Creek occurring prior to November 19, 2008.

IT IS SO ORDERED.

Dated: December 29, 2010

/s/

ROBERT HELFAND

Administrative Law Judge

Office of Administrative Hearings